

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

BEFORE THE SOUTH CAROLINA
DEPARTMENT OF INSURANCE

IN THE MATTER OF:)
)
SELF-FUNDED RATES FOR THE)
WORKERS' COMPENSATION)
ASSIGNED RISK PLAN)
_____)

This matter comes before me pursuant to the provisions of S.C. Code Ann. § 38-73-540(C) (2002). Section 38-73-540(C) provides:

It is essential for maintaining the viability of the assigned risk plan to establish and maintain rates at a level which permits the plan to operate as a self-funded mechanism. The plan administrator shall maintain necessary rate making data in order to permit the actuarial determination of rates and rating plans appropriate for the business insured through the plan. All assigned carriers shall report their experience on business written under the plan to the plan administrator in a format prescribed by the plan administrator. The plan administrator shall monitor rate adequacy and plan results and shall notify the director of the Department of Insurance in the event that excessive losses are indicated so as to enable the director to take corrective action.

By Order dated March 1, 1990, the Chief Insurance Commissioner of the Department, acting with authority granted by S.C. Code Ann. § 38-73-1430 (Supp. 2000), directed workers compensation rate filings be treated differently for the voluntary and the assigned risk markets. Generally, a request for insurance loss cost and assigned risk revisions are governed by S. C. Code Ann. § 38-73-910 which requires notice of a rate increase and a public hearing, if requested. In 1998, S.C. Code Ann. § 38-73-540(C) was amended to provide a mechanism to ensure assigned risk rates are self-sustaining. It also provides a mechanism for corrective action in the event current rates are not adequate. The fact that the mechanism under § 38-73-540(C) is an alternative to the hearing procedure was recognized in *NCCI v. South Carolina Department of Insurance and Philip S. Porter*, ALJ Docket No. 00-ALJ-09-0687 (2001). In this decision, Judge Kittrell opined:

I find and conclude that the current predicament of assigned risk servicing carriers alluded to by several witnesses is not without redress. NCCI may file for new assigned risk rates and provide newer data which might substantiate the request for a rate increase. ***I also note that S.C. Code Ann. §38-73-540(C) provides an alternate and flexible remedy.*** Under that section, assigned risk carriers shall report their experience to the plan

administrator who shall notify the Department to enable the director of the Department to take corrective action, if necessary. ***Nothing in this ruling precludes the servicing carriers from have their rate needs addressed in this way. (Emphasis added).***

Under S.C. Code Ann. § 38-73-540(C), the plan administrator is required to monitor rate adequacy and plan results, and is required to notify the director of the Department of Insurance in the event that excessive losses are indicated so as to enable the director to take corrective action. In recognition of the recent changes enacted by S. C. Code Ann. § 38-73-540(C), which mandate that assigned risk rates be self-funded, I find and conclude that it is equitable that the loss costs decrease of a -10.4% be applied only to the voluntary program until such time when either an amended NCCI filing is submitted ***or a corrective action granted.*** (Emphasis added).

Judge Kittrell's opinion recognized the authority of this Department to take corrective action pursuant to § 38-73-540(C) upon notice from the Plan Administrator that excessive losses exist within the assigned risk plan.

On November 10, 2004, the National Council on Compensation Insurance, as the Plan Administrator, forwarded to the Department notice that the assigned risk plan was experiencing excessive losses. That Notice is attached to this Order as Exhibit B.

Department staff has reviewed the notice and other e and other supporting data received from the Plan Administrator and consulted with the Consumer Advocate, I hereby conclude that corrective action is necessary to ensure that the assigned risk plan is self-funded and self-sustaining in accordance with the requirements of § 38-73-540(C).

IT IS THEREFORE ORDERED that as mandated by S.C. Code Ann. § 38-73-540(C) that the Plan Administrator calculate revised rates and rating values for South Carolina's Workers Compensation Assigned Risk Plan. These new rates shall be effective February 15, 2005 for new and renewal policies reflecting an overall average increase of 32.8% for the industrial classes.

IT IS FURTHER ORDERED that in calculating the revised rates and rating values for South Carolina's assigned risk market, a loss cost multiplier of 2.176 be applied to the South Carolina voluntary market loss costs effective July 1, 2004.

IT IS FURTHER ORDERED that in calculating the revised rates and rating values for South Carolina's assigned risk market, the loss cost multiplier of 2.176 should reflect an overall average increase of 11.3% to the current assigned risk market expense level in effect since December 1, 2001.

IT IS FURTHER ORDERED that in calculating the revised rates and rating values for South Carolina's assigned risk plan, the overall average increase of 11.3% to the current assigned risk market expense level should reflect \$500,000 for fraud prevention.

IT IS FURTHER ORDERED that in calculating the revised rates and rating values for South Carolina's assigned risk plan, the loss cost multiplier of 2.176 should reflect an overall decrease of 11.3% to current assigned risk differential.

IT IS FURTHER ORDERED that NCCI take the other action(s) outlined in Exhibit B result in rates for the assigned risk plan that are self-sustaining and are not inadequate, excessive or unfairly discriminatory.

AND IT IS SO ORDERED.

A handwritten signature in cursive script, reading "Gwendolyn Fuller McGriff".

Gwendolyn Fuller McGriff
Co-Acting Director
South Carolina Department of Insurance

December 15, 2004 at
Columbia, South Carolina